



City of Seattle

Greg Nichols, Mayor
Department of Planning and Development
Diane Sugimura, Director

**CITY OF SEATTLE
ANALYSIS AND DECISION OF THE DIRECTOR OF
THE DEPARTMENT OF PLANNING AND DEVELOPMENT**

Application Number: 2208322
Applicant Name: Andy Parker for Scott Nodland
Address of Project: 3619 Albion Place North

SUMMARY OF PROPOSED ACTION

Master Use Permit to change the use of existing building, legally established for substation use, to a 2-to-4 story, 17 unit apartment building with parking for 21 vehicles below and at grade. Project includes a 19-foot height addition to the building.

The following approvals are required:

Variance – To allow expansion of an existing nonconforming structure.
SMC Section 23.42.112.A.

Variance – To allow portions of the structure to expand into required side setbacks.
SMC Section 23.45.014.C. (Required: 11 feet; Proposed: South side: 8 feet.
North side: 1-foot)

Variance – To allow access to parking from a street where alley access is required.
SMC Section 23.45.018.B.1.

SEPA - Environmental Determination (SMC 25.05)

SEPA DETERMINATION: ☐ Exempt ☐ DNS ☐ MDNS ☐ EIS

☒ DNS with conditions

☒ DNS involving non-exempt grading or demolition or
involving another agency with jurisdiction

BACKGROUND DATA

Site and Vicinity Description

The 13,440 square foot site is located in south Wallingford one lot north of N. 36th Street between Albion Place North and an unusually wide (32-foot) alley. It is at the very south end of an L3 zone. Zoning to the south, where there are three adjacent properties developed (from west to east) with a single family house and nonconforming warehouse and machine works uses, is L2. Zoning to the east, across Albion Place North, is C1. That side of the street is developed, immediately across the street from the subject property, with (from north to south) an office building, a City Light substation, and an apartment building. To the north of the subject property is a 5-unit multifamily structure, and other multifamily structure developments continue to the north. Across the alley to the west are several apartment buildings. Up the alley farther north are several single family residences.

The site is developed with a two-story structure with a 6,700 square-foot footprint. The building was constructed in 1905 for use as a City Light transformer station. Since the early 1960s, the site and building have been used by Doc Freeman as a boat supply warehouse and parts machine shop. Site topography consists of an 11.5-foot grade change over the 81-foot building edge-to-building edge (running east to west).

Proposal Description

The proposal would result in a 19,115 square foot structure housing 17 residential units. It would re-use the entire existing building with extensive remodeling, and adapt it to residential use. It would also add up to two floors to the structure, variously placed over the existing footprint. There would be usable floor area for residential use in several clerestories. Access would be taken from both Albion Place North (to serve an underground parking garage for 7 spaces) and from the alley, which would serve as access to 14 surface parking spaces. Open space would be provided in a courtyard-like area to the northwest of the structure, and some private open spaces would be provided along Albion Place North. Variances are requested to modify the side yards on both sides of the structure, and to take vehicular access from Albion Place North (alley access required).

Public Comment

Public notice of this project was published on 10 July 2003. The public comment period was extended by written request, and ended on 6 August 2003. Seventeen public comment letters representing 14 different people were received during the comment period. All commenters were opposed to the granting of any of the variances. Concerns were expressed regarding the precedential effect of any approval of variances, proposed bulk and scale, compability of the proposed expansion with the character and/or desired character of the neighborhood, potential presence of toxic materials on the site and need for adequate assessment and clean-up plan, pedestrian impacts of parking access off Albion, inadequacy of provisions for parking, likelihood of increased traffic congestion, lack of adequacy of parking on Albion as it is, lack of adequacy of Albion - a narrow street - to bear the project's traffic, need for alley to remain open during construction, noise impacts, view impacts to private properties, and reduction of nearby property values.

ANALYSIS – VARIANCE

Variances from the provisions or requirements of this Land Use Code shall be authorized only when all the following italicized facts and conditions are found to exist.

1. *Because of unusual conditions applicable to the subject property, including size, shape topography, location or surroundings, which were not created by the owner or applicant, the strict application of this Land Use Code would deprive the property of rights and privileges enjoyed by other properties in the same zone or vicinity; and*

The subject site is large and regularly shaped, with no particularly unusual topographic conditions. The slope has been cut and retained, and hence affords reasonable opportunities for development. What is unusual about the site is that it contains a large commercial structure built long before current code regulations applied. Thus, the building is much larger from north to south, and much deeper (and consequently of greater lot coverage) than would currently be permitted. The building also has vehicular access for on-site loading (not parking) from both street and alley, which would not be permitted today; all parking (4 spaces) is presently served through the alley. The applicant suggests that the desire to preserve the existing building, together with topographic conditions limits the location of desired improvements. However, at SMC Section 23.45.006.G, 23.42.108, and 23.42.110 the Seattle Land Use code liberally provides for re-use and expansion of structures containing non-conforming uses, allowing for departures from all development standards except parking and density. Even so, the space within the existing structure could be put to entirely residential use, as contemplated by SMC Section 23.45.006.G and the development meets all applicable development standards.

It is the desire to expand the structure, and in particular to make use of its existing foundation, bearing walls and potential for internal parking to serve the expansion that creates the alleged hardship(s), and leads to need for multiple variances. Certainly there is merit to the desire to make use of what exists. The question is whether what exists represents a hardship relative to applicable development standards. To the degree that it obstructs construction in code-complying locations, it probably is best regarded as a hardship. Accordingly, some accommodations must be made to not deprive the property of rights and privileges enjoyed by other properties in the same zone and vicinity, namely reasonable development. This finding applies to each of the requested variances.

2. *The requested variance does not go beyond the minimum necessary to afford relief and does not constitute a grant of special privilege inconsistent with the limitations upon other properties in the vicinity and zone in which the subject property is located, and*

Here the question is whether reasonable development can occur without one or more of the variances. Re-use of the existing building alone hardly constitutes sufficient relief, because it is only 12,371 square feet in size, and a new building comporting with development standards could be at least 75 feet wide, 67.2 feet deep, and 3 full floors, or 16,380 square feet. However, that somewhat underestimates the development potential of the property, because the width limit for structure (75 feet) together with one side setback for a building of the proposed height (11

feet), building-code-required 10-foot separation from a second onsite building with a 30-foot-high side façade, and the other side setback (6 feet) would leave 18 feet of width from north-to-south open for development. That 18 feet width could run the full building depth (67.2 feet) and for 3 full floors, yielding 3,629 additional square feet. In summary, a rough estimate of the absolute maximum development under the code (not considering other limitations like parking, open space and landscaping) would be something on the order of 20,009 square feet. The proposed development would result in slightly less development than that (19,790 square feet). From that perspective, the proposal does not go beyond the minimum necessary to provide relief, and would not constitute a grant of special privilege inconsistent with limitations upon other properties in the vicinity and zone in which the subject property is located.

Building volume is only the most general approach to assessment of minimum necessary. The applicant's argument for greatly reduced side setbacks for the proposed addition is that the existing building configuration is such that required setbacks for the addition could be observed only at undue cost. A cursory study of the floor plans does not entirely support this argument, on the north side in particular. It is certainly possible to place a structural column within Unit R1 at the 11-foot required side setback average distance from the north property line to support whatever members might be needed to carry loads going up. Such a column would be conveniently located within the wall proposed to separate Unit R1's bathroom from the rest of the unit. Certainly some reconfiguration of Unit R1 might be required, but it would remain a functional unit, and the beam span required need be no more than 18 feet and could be as little as 16 feet. In short, there are no structural impediments to observing the required side setback imposed by the existing structure; the only substantial effect is to reduce the size of Unit R6 at the top two levels of the structure from about 1104 square feet to about 790 square feet - a still entirely functional size. This loss of 314 square feet to accommodate the required 11-foot average setback seems not unreasonable. In conclusion, then, the requested reduction of side setback on the north side of the structure from the 11 foot average to 1-foot 5/8-inches goes beyond the minimum required to provide relief. Indeed, no variance from the requirement is needed.

The same argument does not apply on the south side. First of all, the degree of variance is considerably less, in that the new walls of the addition would be set back 8 feet from the property line (11-feet required). More importantly, there are structural reasons for locating the wall where it is proposed to be located. In truth, the notch in the wall on the south side is the logical place to locate the bearing wall, because otherwise a new bearing wall would have to be constructed a few feet within the old one for the entire depth of the building. Moreover, to do that would result in loss of parking space #4. The only consequence of the 3-foot reduction of the setback would be observed at Level 4 of the structure. Below that, the walls already exist, and the mezzanine level of Unit M6 would step back to the required average setback (11 feet). In short, the 3 foot reduction in side setback along the south side of the building is the minimum necessary to provide relief.

With respect to location of access to parking, again, it is the expansion which triggers the need for additional parking spaces. The location of the existing structure (the identified hardship), is such that all required parking cannot be provided at grade or in any other reasonable fashion

when accessed from the back. It would result in drastic loss of development potential of the site to not allow access from Albion Place North. Accordingly, such access is the minimum necessary to provide relief.

One small element of the proposal that goes beyond the minimum necessary to provide relief is the outdoor deck areas provided on the south side of the building at Level 4, where the setback and expansion of nonconforming structure variances are required for unit construction. Here the units would provide access to decks located within the setback area, where they could not otherwise be. This certainly goes beyond the minimum necessary to provide relief. Hence, the private deck areas at Level 4 should be cut back to observe the required average setback of 11 feet. (The open space lost must be made up elsewhere.)

3. *The granting of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the zone or vicinity in which the subject property is located; and*

Construction in the north side setback clearly would adversely impact the neighboring structure to the north, casting extensive additional shadow on it. There are also issues on the south side largely regarding adverse impacts (privacy, light, air, shadowing, noise, and odor); these are presented by the small south setback variance on the adjacent properties. There would also be adverse impacts of the vehicular access variance on vehicular circulation on streets in the vicinity. Because the existing structure is permitted to be changed to residential use without regard to development standards, no concerns pertain at levels 1-3. At level 4, where the 3-foot setback variance seems reasonable so far, there would be small impacts due to increased building mass, including reductions of light and air and increases in shadowing. Because the building sits higher on the hill than properties to the south, this impact would be felt most during summer months, and probably not at all during winter months. Because light levels are high in summer, neither light nor shadowing impacts seem of substantial concern. The same is not the case for the deck areas at Level 4. In addition to going beyond the minimum necessary to provide relief, they are likely to have adverse privacy and noise impacts on the adjacent properties to the south. Hence, as stated above, the private deck areas at Level 4 should be cut back to observe the required average setback of 11 feet. (The open space lost must be made up elsewhere.)

With respect to the adverse circulation impacts on substandard area streets, comment letters suggest, and the site visit confirmed, that there are poor sight lines at the intersection of Albion Place North and North 36th Street. In addition, Albion Place North has limited capacity, and the substantial slopes of all the streets and alleys in the immediate area pose additional circulation problems. However, the addition of 7 parking spaces to the street system seems entirely inconsequential insofar as worsening these problems might go. Accordingly, they cannot be regarded as materially detrimental or injurious to properties in the vicinity.

4. *The literal interpretation and strict application of the applicable provisions or requirements of this Land Use Code would cause undue hardship or practical difficulties; and*

As analyzed above, denying the north side setback variance request would not cause undue hardship or practical difficulties. It would at worst slightly reduce the size of one of the larger

units in the proposed building, which even so it would remain larger than certain other units in the building. Not granting the south side setback variance request (itself posited upon granting the request to expand an existing nonconforming structure) would likely cause some undue hardship or practical difficulties.

5. *The requested variance would be consistent with the spirit and purpose of the Land Use Code regulations for the area.*

Granting the request for minor south side setback variance, to expand the nonconforming structure, and to take access from the street as well as the alley would allow for development at or near the density limit and have virtually no substantial adverse impacts on the subject, adjacent, or nearby properties. It would substantially increase affordable housing opportunities in the City, which is certainly consistent with the spirit and purposes of the Land Use Code, Land Use Policies, and Comprehensive Plan.

DECISION – VARIANCE (Based upon approved plans in the file)

For all of the reasons annuciated above,

The north side setback variance request is **DENIED**.

The south side setback request for reduction from the 11-foot average side setback required to 8 foot side setback is **CONDITIONALLY GRANTED**.

The variance to take access from Albion Place North is **GRANTED**.

The variance to expand a nonconforming structure is **CONDITIONALLY GRANTED**.

CONDITIONS – VARIANCE

(following SEPA analysis and conditions)

ANALYSIS - SEPA

The initial disclosure of the potential impacts from this project was made in the annotated environmental checklist (submitted 14 August 2003), and supplemental information in the project file submitted by the applicant's agent. The information in the checklist, the supplemental information, and the experience of the lead agency with the review of similar projects form the basis for this analysis and decision.

The SEPA Overview Policy (SMC 23.05 665.D) clarifies the relationship between codes, policies, and environmental review. Specific policies for each element of the environment, certain neighborhood plans, and other policies explicitly referenced may serve as the basis for exercising substantive SEPA authority.

The Overview Policy states, in part, "Where City regulations have been adopted to address an environmental impact, it shall be presumed that such regulations are adequate to achieve sufficient mitigation" subject to some limitations. Under such limitations/circumstances (SMC 25.05.665 D1-7) mitigation can be considered. Thus, a more detailed discussion of some of the impacts is appropriate.

Short-term Impacts

The following temporary construction related impacts are expected: temporary soil erosion; decreased air quality due to increased dust and other suspended air particulates during demolition and construction; increased noise and vibration from construction equipment; increased traffic and parking demand from construction workers; and tracking of mud onto adjacent streets by construction vehicles. These impacts are not considered significant because they are temporary and/or minor in scope. Although not significant, some of the impacts are adverse and certain mitigation measures are appropriate as specified below.

City codes and/or ordinances apply to the proposal and will provide adequate mitigation for some of the identified impacts. Specifically these are: 1) Stormwater, Grading and Drainage Control Ordinance (storm water runoff, temporary soil erosion, and site excavation); and 2) Street Use Ordinance (tracking of mud onto public streets, and obstruction of rights-of-way during construction).

Construction Noise

Some short-term noise from construction activities is anticipated. Construction noise could result in periodic increases in speech interference and annoyance in the residential buildings to the west and north. In addition to compliance with the Noise Ordinance (SMC 25.08), the applicant will be required to limit construction and grading activities to non-holiday weekdays between the hours of 7:30 a.m. and 6:00 p.m. Limited exceptions to accomplish quiet work may be permitted during additional hours as approved by DCLU, and only if at least 3-working-days have been provided for DCLU to effectively evaluate any request(s). This condition shall be required pursuant to the SEPA authority to mitigate noise impacts during construction (SMC 25.05.675 B).

Air Quality

Demolition will create dust, leading to an increase in the level of suspended particulates in the air, which could be carried by winds out of the construction area. The Street Use Ordinance (SMC 15.22) requires watering the site, as necessary, to reduce dust. In addition, the Puget Sound Clean Air Agency (PSCAA regulation 9.15) requires that reasonable precautions be taken

to avoid dust emissions. In addition to spraying water or chemical suppressants, this may require activities which produce air-borne materials or other pollutant elements to be contained within a temporary enclosure. Demolition could require the use of heavy trucks and smaller equipment such as generators and compressors. These engines would emit air pollutants that would contribute slightly to the degradation of local air quality. Since the demolition activity would be of short duration, the associated impact is anticipated to be minor, and does not warrant mitigation under SEPA.

PSCAA, Department of Labor and Industry, and EPA regulations provide for the safe removal and disposal of asbestos. However, no permit process exists that ensures that PSCAA has been notified of the proposed building demolition and that asbestos has been removed from the site. A condition shall be added requiring the applicant to submit to DCLU a copy of the PSCAA demolition permit prior to issuance of master use and/or demolition permit. This condition is imposed pursuant to SEPA authority to mitigate air quality, construction and environmental health impacts, SMC 25.05.675 A, B, and F.

Environmental Health

Kane Environmental prepared a clean-up action plan for the subject site to address petroleum hydrocarbon-contaminated soils, heavy metal impacted soils, and interior building dust and underground concrete dust. This plan is based on limited Phase II environmental assessments performed by Nowicki and Associates. To ensure adequate mitigation, all of the Kane Environmental remediation tasks and compliance monitoring recommendations in sections 3.0 and 4.0 of the report dated 6 May 2003 shall be implemented. Prior to finaling of the building permit, the owner(s) and/or responsible party(s) shall furnish to DPD the No Further Action letter from Ecology identified in section 7.5 of the report.

Streets, Traffic, and Sidewalks

The Street Use Ordinance includes regulations which mitigate dust, mud, and circulation. Temporary closure of the sidewalk and/or traffic lane(s) is controlled with a street use permit through the Seattle Transportation (SDOT). It is the City's policy to minimize or prevent adverse traffic impacts which would undermine the stability, safety, and/or character of a neighborhood, or surrounding areas (SMC 25.05.675 R). In this case, adequate mitigation is provided by enforcement of the Street Use Ordinance. No further mitigation is required.

Parking

During construction, parking demand will increase due to additional demand created by construction personnel and equipment. It does not appear that there is an adequate supply of off-street parking to accommodate increased parking demand during construction. The applicant has provided a construction phase parking mitigation plan, but it is inadequate in that it does not identify peak construction-phase parking demand or ensure that all such demand will be met in this area of limited on-street parking availability. Accordingly, prior to approval of any permit to demolish or construct, a Construction Phase Transportation Management Plan securing the approval of DPD shall be submitted. That plan shall identify the peak number of construction

personnel, the phasing of their presence in the project area, and effective means of minimizing or eliminating spillover demand for on-street parking in the project vicinity.

Long-term Impacts

Long-term or use-related impacts are also anticipated from the proposal and include: increased light and glare; increased ambient noise due to increased human activity and vehicular traffic; increased vehicular parking demand; and increased demand on public services and utilities. The remaining long-term impacts are minor in relative scope and the level of adversity is mitigated by compliance with City codes and ordinances; Energy Code (energy consumption); Seattle Land Use Code (required parking and landscaping, bulk and scale, light and glare); and the Stormwater, Grading and Drainage Ordinance (stormwater runoff).

Light and Glare

The proposal site is located adjacent or near to residentially zoned properties in the immediate vicinity. The site is surrounded with extensive vegetation, trees and steep slope on the east, west, and south property lines, providing adequate screening for light and glare impacts on adjacent residences and the street. Furthermore, the Land Use Code requirement for shielding and reorienting exterior lighting to minimize impacts on surrounding properties is sufficient mitigation for this impact (SMC 23.45.045). No further mitigation under SEPA is warranted.

Parking

The proposal will satisfy land use code parking requirements, and the demand statistics in the ITE parking manual for low-to-midrise apartment buildings being highest for Saturday peaks at 1.21 vehicles per unit. Given the relatively small size of the proposed units, and the availability of public transportation within an easy walk, this is a reasonable ratio to use for parking demand. With 17 units, demand at peak on Saturday would be for 21 parking spaces - the number provided. Therefore conditioning pursuant to SEPA authority SMC 25.05.675M is not warranted.

Traffic

The proposal is estimated to generate a minimal number of a.m. and p.m. peak period trips - a number not expected to have a significant adverse impact on traffic conditions or reduce the level of service at nearby intersections. Therefore, no mitigation of traffic impacts under SEPA is warranted for this project.

Other Impacts

Several codes adopted by the City will appropriately mitigate the use related adverse impacts created by the proposal. Specifically these are: Grading and Drainage Control Ordinance (storm water runoff from additional site coverage by impervious surface); Puget Sound Clean Air Agency regulations (increased airborne emissions); and the Seattle Energy Code (energy consumption in the long term).

DECISION - SEPA

This decision was made after review by the responsible official on behalf of the lead agency of a completed environmental checklist and other information on file with the responsible department. This constitutes the Threshold Determination and form. The intent of this declaration is to satisfy the requirements of the State Environmental Policy Act (RCW 43.21C), including the requirement to inform the public of agency decisions pursuant to SEPA.

- [X] Determination of Non-Significance. This proposal has been determined to not have a significant adverse impact upon the environment. An EIS is not required under RCW 43.21C.030(2)(c).
- [] Determination of Significance. This proposal has or may have a significant adverse impact upon the environment. An EIS is required under RCW 43.21C.030(2)(c).

CONDITIONS-SEPA

Prior to the Issuance of any permit to demolish:

1. The owner(s) and/or responsible party(s) shall submit a copy to DPD of the PSCAA Demolition Permit.

Prior to the Issuance of any permit to demolish or construct:

2. The owner(s) and/or responsible party(s) shall provide Construction Phase Transportation Management Plan securing the approval of DPD shall be submitted. That plan shall identify the peak number of construction personnel, the phasing of their presence in the project area, and effective means of minimizing or eliminating spillover demand for on-street parking in the project vicinity.

During Construction

The following conditions to be enforced during construction shall be posted at the site in a location on the property line that is visible and accessible to the public and to construction personnel from the street right-of-way. The conditions will be affixed to placards prepared by DCLU. The placards will be issued along with the building permit set of plans. The placard shall be laminated with clear plastic or other waterproofing material, and shall remain posted on-site for the duration of the construction.

3. In order to further mitigate the noise impacts during construction, the owner(s) and/or responsible party(s) shall limit the hours of outside construction to non-holiday weekdays from 7:30 a.m. to 6:00 p.m. This condition may be modified by the Department to permit work of an emergency nature or to allow low noise interior work after the shells of the

structure is enclosed. This condition may also be modified to permit low noise exterior work (e.g., installation of landscaping) after approval from the Land Use Planner. Any request for modification of this condition must provide a window of at least 3 working days for DCLU to process the request.

4. All of the Kane Environmental remediation tasks and compliance monitoring recommendations in sections 3.0 and 4.0 of the report dated 6 May 2003 shall be implemented.
5. The owner(s) and/or responsible party(s) shall effectively maintain the Construction Phase Transportation Management Plan in force.

Prior to issuance of any temporary or permanent certificate of occupancy

6. The owner(s) and/or responsible party(s) shall furnish to DPD the No Further Action letter from Ecology identified in section 7.5 of the Kane Environmental report dated 6 May 2003.

CONDITIONS - VARIANCE

Prior to issuance of the MUP:

The owner(s) and/or responsible party(s) shall revise plans to show:

1. The private deck areas at Level 4 cut back to observe the required average setback of 11 feet. Alternatively, the open space area beyond the required setback line may be landscaped provided that landscaping effectively and permanently prohibits human passage beyond the required setback line. If any open space is eliminated, plans shall be revised to make up the open space lost must be made up elsewhere on the site.

Prior to issuance of any temporary or permanent certificate of occupancy

3. The responsible planner shall verify that the open space at Level 4 comports with the approved plans.

For the life of the project

4. The owner(s) and/or responsible party(s) shall maintain the development per plan.

Non-Appealable conditions:

The owner(s) and/or responsible party(s) shall revise plans to include all conditions of approval FOLLOWING ISSUANCE. (Do not include any “prior to issuance” conditions.)

Signature: (signature on file) Date: December 11, 2003

Paul M. Janos, Land Use Planner

Department of Design, Construction and Land Use

PMJ:bg

Janos/doc/2208322 side setbacks parking access sight triangle + SEPA Janos